

1984 WL 249791 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

July 27, 1984

***1 RE: Opinion Request No. 914 Insurance, Statutory Construction**

The Honorable Francis X. Archibald
Member
House of Representatives
1128 John Rutledge Avenue
Hanahan, South Carolina 29406

Dear Representative Archibald:

You have asked for an interpretation of [§ 38-35-60, CODE OF LAWS OF SOUTH CAROLINA \(1976\)](#), which mandates negotiated discounts for health care provision under certain insurance contracts. Specifically, you have posed the following questions:

1. If a hospital were to enter into a contract with an employer to provide hospital care for its employees wherein discounts from its customary charges were allowed to that employer (by reason of guaranteed patronage or otherwise), would the hospital be required by reason of the section involved to extend those discounts to an insurer or to a 'person?' Further, if that contract between the hospital and the employer were administered by an insurer, would the answer be different?
2. If an insurer were to make full payment on behalf of the patient for the services of a hospital within seven days of the date of the receipt by the patient of the bill for such services, would such insurer be entitled to the same discount allowed any other insurer as would a 'person' making such payment?
3. Must an insurer contract with health care providers on the same basis as health care coverage is provided by corporations organized under Chapters 13 (Non-profit Hospital Service Plan) and 14 (Non-profit Medical Service Corporations) of Title 37 of the 1962 CODE in order to qualify for the discount? If so, does this involve the mandatory direct payment to the hospitals and physicians involved?

In order to answer your questions it will first be necessary to analyze the statute involved. For ease in analysis the statute should be divided into two parts. The first part provides that where an insurer contracts directly with a hospital to provide full service hospital and medical care to its policy holders in the same or a comparable manner as such coverage is provided by corporations organized under Chapters 13 and 14 of Title 37, 1962, CODE, (Hospital and Medical Service Corporations) the insurer is entitled to the same discounts allowed to any other insurer. The intent here appears to be to discourage certain types of high volume hospitalization and medical insurance companies from dominating the market by contracting with hospitals for exclusive discount rates. Such purpose is apparent because the statute has that reasonable effect. [Scroggie v. Scarborough](#), 160 S.E. 596, 162 S.C. 218 (1931).

The second part of the statute is a bit more straight-forward, although it creates a more complicated issue with which we will deal below. It provides that any 'person' who pays his hospital bill in full within seven days of billing will be entitled to the same discount allowed to any insurer.

Now that we have analyzed the statute we may proceed to answer your questions.

QUESTION ONE:

*2 The answer to your first question would depend upon whether an ‘employer’ could be considered an ‘insurer’ under the scenario you have proposed. Our General Assembly has defined ‘insurer’ as ‘any corporation, fraternal organization, burial association, other association, partnership, society, order, individual, or aggregation or individuals engaging or proposing or attempting to engage as principals in any kind of insurance or surety business, including the exchanging of reciprocal or interinsurance contracts between individuals, partnerships and corporations.’ § 38-1-20, CODE. ‘Insurance is defined as ‘a contract whereby one undertakes to indemnify another or pay a specified amount upon determinable contingencies.’ § 38-1-30, CODE.

Although the Code provides several specialized definitions for the term ‘employer,’ there is no statutory definition which is helpful in the general sense. In that case the word must be defined by using its ordinary meaning. [Martin v. Nationwide Mutual Insurance Co.](#), 183 S.E.2d 451, 256 S.C. 577 (1971). ‘Employer’ is defined by Webster’s Third New International Dictionary as ‘the owner of an enterprise (as a business or manufacturing firm) that employs personnel for wages or salaries.’

It is apparent from the definitions that an insurer could be (and usually is) an employer. However, an employer cannot be an insurer unless he is in the business of providing insurance contracts. What this means is that the hospital contracting with an employer under the facts proposed in your first question would not be obligated to provide the discount to others unless that employer happened to be in the insurance business and sold insurance contracts to its employees. All other types of employers would not be insurers within the meaning of the statute.

Question one also raises the interesting point as to whether the above answer would be changed if the contract between the employer and the hospital were administered by an insurer. We feel that such an arrangement would bring § 38-35-60 into play and trigger the obligation of providing discounts to other insurers and persons because to hold otherwise would frustrate the intent of the statute. It is well settled that a statute must be construed in such a way as to ascertain and give effect to the intention of the lawmaking body. [Arkwright Mills v. Murph](#), 65 S.E.2d 665, 219 S.C. 438 (1951); [Brown v. Sikes](#), 198 S.E. 854, 188 S.C. 288 (1938). To accomplish this, it is proper to look to the effects and consequences of the interpretation urged. [State v. Patterson](#), 66 S.E.2d 875 (1951). A plain reading of the statute in question reveals that the legislature intended to prevent one company or one group of companies from monopolizing the industry by using superior bargaining strength to contract for exclusive rates. See [Srcoggie v. Scarborough](#), *supra*. If we were to construe this statute in such a way as to allow the simple circumvention of this provision by the use of employers as ‘go-betweens’ we would not be giving it a reasonable and practical construction consistent with the purpose and policy implied in the statute. See [Hay v. South Carolina Tax Commission](#), 255 S.E.2d 837, 273 S.C. 269 (1979).

QUESTION TWO:

*3 This question relates to the second portion of the statute, which provides that any ‘person’ paying his bill in full within seven days of billing is entitled to the same discounts offered to any insurer. Stated another way, the question is, can the term ‘person’ be defined broadly enough to provide that an insurer who pays a claim in full within seven days of billing would be entitled to the same discount offered to any other insurer? Of course, ‘person’ is defined very broadly in the Code to include various types of corporations and business associations. § 32-7-30, CODE. However, this definition cannot be used where to do so would render the application of the statute unreasonable or absurd. [Stephens v. Hendricks](#), 83 S.E.2d 634, 226 S.C. 79 (1954). Also a statute must be construed as a whole, so as to give effect to each of its parts and so as to prevent seeming contradiction between such parts. [Berry v. Atlantic Greyhound Lines](#), 114 F.2d 255 (1940). Finally, it must be assumed that the General Assembly did not intend to do a futile thing. [Fulghum v. Bleakley](#), 181 S.E. 30, 177 S.E. 286 (1935).

Applying these principles to your second question yields but one conclusion. In the first part of the statute the General Assembly placed strict requirements upon the insurers who wished to avail themselves of the benefit of this statutory provision. That is, in order to get the discount the insurer would have to provide full hospital and medical services and make payments the same way

that nonprofit hospital and medical service corporations do. Under the second portion, however, the General Assembly placed a much different requirement upon 'persons.' All a 'person' has to do is pay his bill within seven days. To define 'person' so as to include insurers in this context would render the provisions of the first portion of the statute in conflict with those of the second part. It would impose different requirements on insurers in each part. The first part would then become mere surplusage and the attempt by the legislature to impose them upon insurers would have been futile, possibly reaching an absurd result. For these reasons we feel that 'person' as used in the context of this statute does not encompass insurers. Insurers could not, therefore, avail themselves of the discount merely by paying bills in full within seven days of billing.

QUESTION THREE:

The statute in question specifically provides that an insurer must contract with a hospital to provide full services in the same or a comparable manner as health and hospital service corporations and must arrange for payment under procedures and by those corporations in order to avail itself of the statutory discount. An insurer which does business any other way is ineligible.

Chapter 13 of the above-referenced Title provides that Non-profit Hospital Service Companies organized under said chapter may contract with hospitals for the rendering of hospital service to its subscribers. § 37-1063, found in the same Chapter, provides that such contracts constitute an obligation on the part of the insurer to make cash payments directly to the hospital on behalf of the subscriber. Chapter 14 contains a similar requirement for the direct payment of participating physicians. § 37-1115, 1116, 1962 CODE.

*4 Although the above-referenced sections have been repealed, the concept of hospital and medical service corporations has been recodified under [§ 38-35-10 et seq., 1976 CODE](#). The obligation to make direct payments to providers of health care services was carried forward under [§ 38-35-20, 1976 CODE](#). It is, therefore, our opinion that the requirement that the insurer claiming the statutory discount arrange for payment under procedures used by the hospital and medical service corporations carries with it the obligation to make direct payments to health care providers.

We trust that we have sufficiently answered your questions. If not, please feel free to contact me.

Sincerely,

Clifford O. Koon, Jr.
Assistant Attorney General

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